

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1832 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MANOHAR PARK COOPERATIVE HOUSING SOCIETY LTD

Versus

STATE OF GUJARAT

Appearance:

MR MB GANDHI for Petitioner

SERVED BY DS for Respondent No. 1

MR AJ DESAI, AGP for Respondent No.2.

MR IM PANDYA for Respondent No. 3, 4, 5, 6, 7, 8, 9,10,11

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 14/02/97

ORAL JUDGEMENT

Rule.

I have heard both the sides at length on merits,
and, therefore, I proceed to dispose of this petition
finally by issuing rule today.

2. New Manohar Park Co-operative Housing Society

Limited has preferred the present Writ Petition to challenge the order passed by the State Government on 27th March, 1993. As the petitioner felt aggrieved by the said decision of the State Government, petitioner had preferred Appeal No.43 of 1993 before the Additional Registrar (Appeals)-respondent No.2 before this court to challenge the said order of the State Government passed on 28-1-93. The said appeal is numbered as Appeal No.43 of 1993. In the said appeal an application was filed by the present respondent No.3 to 11 to allow them to join them as parties in the proceeding. The claim of respondent No.3 to 11 was resisted by the present petitioner and the learned Additional Registrar (Appeals)-respondent No.2 was pleased to allow the said application filed by the respondent No.3 to 11 vide order dated 14th December, 1993. Against the said decision of the respondent No.2, the present petitioner had preferred Revision Application before the State Government and the State Government by its order dated 27th March, 1995 rejected the said Revision Application by confirming the order of the respondent No.2 dated 14th December, 1993. Not only the State Government had confirmed the said order of respondent No.2 of 14-2-93 but went a step further by declaring that the initial order passed on 28th January, 1993 of appointing the Administrator for the said co-operative society was valid and legal. The petitioner has come before the court to challenge the said order of the State Government in the Revision Application filed by him because subsequent to said passing of the order by the State Government-respondent No.1, the respondent No.2-Additional Registrar (Appeals) disposed of the said Appeal No.43 of 1993 on 2-3-96 saying that in view of the decision of the State Government, the said appeal does not survive. Therefore, the petitioner is challenging the said order of respondent No.2 in Appeal No. 43 of 1993 as well as of the respondent No.1 of 27th March, 1995.

4. Though the petitioner had initially challenged the order of the State Government confirming the order of the respondent No.2-Additional Registrar (Appeals) of allowing the respondent No.3 to 11 to join the said appeal. The said challenge is not seriously pressed before me by the appellants. After all the order passed by the respondent No.2 of 14-2-93 was a discretionary order and it could not be said that the said order by the respondent No.2 was perverse or against the settled principles of law, and, therefore, the non-interference of the said order by the State Government was quite justified. But the real crux of the matter is as to whether the State Government was justified in going to

pronounce that the initial order passed on 21-1-93 was valid and legal. In the Revision Application which was pertaining to challenge the order of respondent No.2 dated 14-2-93 the said order of the State Government is on the face of it perverse, arbitrary and ultra vires. When the order of 21-1-93 was not the subject matter of the Revision Application, the State Government was not at all justified in giving any decision on the said order dated 21-1-93. The said act of the respondent No.1 has also resulted in dismissal of Appeal No. 43 of 1993 by respondent No.2. Therefore, in the circumstances, I hold that the present petition will have to be allowed and the order of the State Government passed on 27-3-95 saying that the order of 28-1-93 by which the Administrator was appointed for the petitioner-society is to be quashed and set aside. It is also necessary to observe here that in case if the petitioner happen to prefer Revision after the decision of Appeal No.43 of 1993, if the same happen to go against him, then the Revision preferred by him should not be heard by the Officer who has decided the Revision Application on 27-3-95.

5. In view of quashing and setting aside the order of the State Government confirming the order of 21-1-93, the decision of the respondent No.2 for disposal of the Appeal No.43 of 1993 will have to be also quashed and set aside and Appeal No. 43 of 1993 will have to be restored to the file and the respondent No.2 will have to here the said appeal on merits after giving opportunities to both the sides of being heard. The matter namely Appeal No. 43 of 1993 is pending for nearly 4 years and it is pertaining to an order passed on 28-1-93. Therefore, in the circumstances, I direct the present petitioner as well as the respondent No.3 to 11 to appear before the respondent No.2-Additional Registrar (Appeals), Co-operative Societies, Gujarat State, Gandhinagar on 18-3-97 and the learned Registrar (Appeals) should proceed to hear the said appeal on merits and dispose of the said appeal within 4 weeks from the appearance of the parties before him on 18th March, 1997. Thus, the Writ is partly allowed and the rule is made absolute in terms of the same. Both the parties are directed to bear their respective costs.

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